

**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Registration and Title of a
1967 Chevrolet Impala, VIN 164677J292135.

Case No.: 98-H-1069

FINAL DECISION

By letter dated December 29, 1997, Attorney Michael Kepler, bankruptcy trustee, requested a hearing to review the Wisconsin Department of Transportation's refusal to title the above-referenced vehicle in the name of the David C. Larson Bankruptcy Estate. Pursuant to due notice a hearing was held on February 3, 1998, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

David C. Larson Bankruptcy Estate, petitioner, by

Attorney Michael E. Kepler
Kepler & Peyton
353 West Mifflin Street
Madison, WI 53703

Wisconsin Department of Transportation, respondent, by

Attorney Charles M. Kernats
Office of General Counsel
P.O. Box 7910
Madison, WI 53707-7910

Randall Shotliff, intervenor,
5702 North Old 92
Evansville, WI 53536

The Administrative Law Judge issued a proposed decision in this matter on March 4, 1998. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. Randall Shotliff is the registered owner of a 1967 Chevrolet Impala, VIN 164677J292135. In the summer of 1994, Mr. Shotliff delivered the vehicle to Capitol Corvette purportedly for storage. At the time the vehicle was delivered to Capitol Corvette, David Larson, the owner of Capitol Corvette, advised Mr. Shotliff that he would consider the vehicle at Capitol Corvette on consignment and would not charge him for storage.
2. No written consignment agreement for the subject vehicle was executed. Mr. Shotliff testified at the hearing that he was interested in purchasing a particular type of Corvette. The verbal agreement between Mr. Shotliff and David Larson was if Mr. Larson was able to find the particular model Corvette Mr. Shotliff was interested in, Capitol Corvette would give him a \$5000 trade-in allowance for the subject vehicle. Alternatively, Capitol Corvette could sell his vehicle for \$5000. Mr. Shotliff testified that it was his understanding that if Capitol Corvette were able to sell his vehicle for more than \$5000, David Larson would keep the amount in excess of \$5000 as commission.
3. In 1994, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling used motor vehicles. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).
4. David Larson and his wife, Valarie Larson, subsequently filed a bankruptcy petition, bankruptcy case no. 96-32800-7, in the Western District of Wisconsin. The subject vehicle was on the Capitol Corvette property at the time the bankruptcy petition was filed. Attorney Michael Kepler, the bankruptcy trustee, sought to have the subject vehicle included in the bankruptcy estate and subject to the claims of David Larson's creditors. On August 27, 1997, the bankruptcy court issued a default judgment transferring the subject vehicle to the bankruptcy estate.
5. Mr. Kepler, as bankruptcy trustee, applied to the Division of Motor Vehicles of the Department of Transportation (DMV) for a Wisconsin title and registration for the subject vehicle. Because of conflicting ownership claims, the DMV refused to issue a title or registration for the subject vehicle to the David Larson Bankruptcy Estate.
6. Based on the evidence in the record, ownership of the subject vehicle has transferred to the David Larson Bankruptcy Estate and the DMV should issue a title and registration for the subject vehicle to the David Larson Bankruptcy Estate.

Discussion

Sec. 402.326(3), Stats., provides:

Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others; or

(c) Complies with the filing provisions of ch. 409.

Although Mr. Shotliff testified that he delivered the subject vehicle to Capitol Corvette for storage, based on the evidence in the record the vehicle was delivered to Capitol Corvette for sale. In his statement to the Fitchburg Police Department, Mr. Shotliff told the investigating officer that he placed the vehicle at Capitol Corvette on consignment (exh. 4). Mr. Shotliff also admitted at the hearing that he and David Larson had agreed on a minimum sale price or trade-in value for the vehicle and that he had no plans to pick the vehicle up from Capitol Corvette. Mr. Shotliff's intent was to entrust the vehicle to Capitol Corvette for sale. Pursuant to sec. 402.326(3), Stats., the subject vehicle is; therefore, available to satisfy creditors of David Larson.

Sec. 402.326(3), Stats., lists three exceptions to the applicability of the statute. Mr. Shotliff did not allege that he complied with either sec. 402.326(3)(a) or (c), Stats. Mr. Shotliff did not attempt to argue that sec. 402.326(3)(b), Stats., applies in this case. Presumably, this issue was considered by the bankruptcy court in entering its judgement in favor of the bankruptcy estate.

Conclusions of Law

The Administrator concludes:

1. Randall Shotliff delivered the subject vehicle to David Larson for sale. Pursuant to sec. 402.326(3), Stats., the subject vehicle; therefore, became subject to the claims of the creditors of David Larson.
2. The bankruptcy court found that the subject vehicle is part of the bankruptcy estate and subject to the claims of David Larson's creditors. The bankruptcy court ordered that the subject vehicle be transferred to the bankruptcy estate for sale. The bankruptcy court did not order the Division of Motor Vehicles to issue a title and registration to the bankruptcy estate for the subject vehicle; however, to accomplish the order of the bankruptcy court it is necessary to issue a title and registration for the subject vehicle to the bankruptcy estate.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a Wisconsin title and registration to the David C. Larson Bankruptcy Estate for the 1967 Chevrolet Impala, VIN 164677J292135, which is the subject of this matter.

Dated at Madison, Wisconsin on March 23, 1998.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

David H. Schwarz
Administrator